

- R7R A Resolution Authorizing The Mayor And City Clerk To Execute An Agreement Between The City Of Miami Beach And Kimley-Horn And Associates, Inc., For The Preparation Of Environmental Analysis For Miami Beach Transit Projects Including The Beach Corridor Transit Connection Project And Related Services, Pursuant To Request For Qualifications (RFQ) No. 2015-213-KB,
(Procurement/Transportation)
(Agreement)



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

**OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY**

COMMISSION MEMORANDUM

**TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES**

FROM: RAUL J. AGUILA *R. J. Aguilá*
CITY ATTORNEY

DATE: OCTOBER 14, 2015

**SUBJECT: INCREASING STRINGENCY OF CITY OF MIAMI BEACH ETHICS
LAWS BY AMENDING CITY CODE CHAPTER 2, ARTICLE VII
"STANDARDS OF CONDUCT", DIVISION 5 ENTITLED
"CAMPAIGN FINANCE REFORM," BY ADDING THERETO
SECTION 2-491 ENTITLED "PROHIBITED LOBBYING BY
CAMPAIGN CONSULTANTS," PROHIBITING CAMPAIGN
CONSULTANTS AND CERTAIN AFFILIATED PERSONS OR
ENTITIES FROM LOBBYING CITY COMMISSION FOR 12
MONTHS SUBSEQUENT TO SWEARING IN OF SUBJECT
ELECTED OFFICIAL(S), ESTABLISHING DEFINITIONS, AND
LIMITED EXEMPTION; PROVIDING FOR REPEALER,
SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Deede Weithorn, the attached ordinance has been drafted for the purpose of amending the City's Campaign Finance laws so as to include therein a city law prohibiting campaign consultants from lobbying the City Commission.

This amendment to the City's ethics laws serves to augment the City's intent of good government, and will once more place the City of Miami Beach at the forefront of local ethics legislation. The attached ordinance is thus ready for City Commission review and deliberation.

Agenda Item R5P
Date 12-9-15

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 5 ENTITLED "CAMPAIGN FINANCE REFORM," BY ADDING THERETO SECTION 2-491 ENTITLED "PROHIBITED LOBBYING BY CAMPAIGN CONSULTANTS," PROHIBITING CAMPAIGN CONSULTANTS AND CERTAIN AFFILIATED PERSONS OR ENTITIES FROM LOBBYING CITY COMMISSION FOR 12 MONTHS SUBSEQUENT TO SWEARING IN OF SUBJECT ELECTED OFFICIAL(S), ESTABLISHING DEFINITIONS, AND LIMITED EXEMPTION; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, corruption and the appearance of corruption in the form of campaign consultants exploiting their influence with City elected officials on behalf of private interests may erode public confidence in the fairness and impartiality of City governmental decisions; and

WHEREAS, the City of Miami Beach has a paramount interest in preventing corruption or the appearance of corruption which could result in such erosion of public confidence; and

WHEREAS, prohibitions on campaign consultants lobbying former clients/members of the City Commission will protect public confidence in the electoral and governmental processes. It is thus the purpose and intent of the people of the City of Miami Beach in enacting this Ordinance to prohibit campaign consultants from exploiting or appearing to exploit their influence with City elected officials on behalf of private interests.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 5 entitled "Campaign Finance Reform," is hereby amended by adding the following City Code section 2-491 entitled "Prohibited Lobbying by Campaign Consultants" to read as follows:

Sec. 2-491. Prohibited Lobbying by Campaign Consultants.

A. Prohibition.

No campaign consultant shall lobby the City Commission for a period of 12 months following the swearing in of any elected official(s) for whom the campaign consultant provided campaign consulting services within the past election cycle.

B. Definitions.

(a) "Campaign consultant" means any person or entity that receives or is promised economic consideration in exchange for campaign consulting services to a candidate for elected office in the City of Miami Beach.

(1) "Campaign consultant" shall include any individual who has an ownership interest of 10% or greater in the campaign consultant, and any employee of the campaign consultant, except as otherwise excepted below.

(2) "Campaign consultant" shall not include:

i) any vendor for a campaign whose primary responsibility is to supply goods or services for a campaign.

ii) an employee of a campaign consultant whose sole duties are primarily clerical; or

iii) an employee of a campaign consultant who did not personally provide campaign consulting services.

(b) "Campaign consulting services" means primary responsibility for campaign management or campaign strategy.

(c) "Campaign management" means conducting, coordinating or supervising a campaign to elect a candidate.

(d) "Campaign strategy" means formulation of plans for the election of a candidate.

(e) "Candidate" shall have the meaning ascribed to such term in Florida Statutes, section 97.021(5), as amended and supplemented.

(f) "Economic consideration" means any payments, fees, commissions, gifts, or anything else of value received directly or indirectly as consideration for campaign consulting services. The term "economic consideration" does not include reimbursements for out of pocket expenses.

(g) "Past election cycle" means the subject immediately preceding City of Miami Beach General Election/Special Election held for the purpose of electing a member of the City Commission.

(h) "Lobby" for purposes of this Code Section shall mean the act of seeking to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any member of the City Commission.

C. Limited Exemption.

A campaign consultant who has within the past election cycle provided campaign consulting services to an incumbent member of the City Commission, and has entered into a lobbying contract prior to the effective date of the ordinance creating this code section, the term of which lobbying contract includes the subject proscribed 12

month period established in Subsection A above, is exempt from the proscription herein with limited regard to that subject lobbying contract.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2015.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

Philip Levine
Mayor

Rafael E. Granado
City Clerk

Requested by Commissioner Deede Weithorn

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Phil Levine
City Attorney

10/9/15
Date

MIAMI BEACH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, December 9, 2015**, at the times listed, or as soon thereafter as the matter can be heard:

10:15 a.m.

An Ordinance Amending Chapter 82 Of The Code Of The City Of Miami Beach, Entitled "Public Property," By Amending Article IV, Entitled "Uses In Public Rights-Of-Way," By Amending Division 5, Entitled "Sidewalk Cafes," By Amending Subdivision II, Entitled "Permit," By Amending Section 82-381 Thereof, Entitled "Permitted Areas; Conditional Permit; City Manager's Right To Remove Sidewalk Cafes," By Requiring Display Of Prices For Food And Drink Menu Items Or Any Food And Drink Menu Specials, And Establishing A Notice Provision To Customers Regarding Any Automatic Gratuity Or Service Charge By The Operator Of The Sidewalk Café; By Amending Section 82-382 Thereof, Entitled "Application," Mandating That A Sidewalk Café Application Be Denied For Failure To Have Food And Drink Menus Which Includes Prices For Food And Drink Menu Items, Food And Drink Menu Specials, Or Notification Of Any Automatic Gratuity Or Service Charge Imposed By The Sidewalk Café Operator; By Amending Section 82-385 Thereof, Entitled "Minimum Standards, Criteria, And Conditions For Operation Of Sidewalk Cafes," By Prohibiting A Sidewalk Café To Operate Without Food And Drink Menus Which Show The Pricing For Any Food And Drink Menu Item Or Food And Drink Menu Special, And Fail To Notify Customers Of Any Automatic Gratuity Or Service Charge Imposed By The Sidewalk Café Operator; And Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:20 a.m.

An Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Section 106-47, Entitled "Freight, Commercial, And Passenger Curb Loading Zones; Hours; Deliveries," By Deleting Subsection (c), (d) And (e); By Amending Subsection (b) To Require Property Owners And Businesses To Confirm Compliance With Subsection (g) For Commercial Motor Vehicles Deliveries And Services; By Prohibiting Deliveries Or Services For Commercial Motor Vehicles That Fail To Comply With Subsections (f) Through (h); By Creating A New Subsection (i) And (e), Which Limits The Authority Of The Special Master; By Amending The Enforcement And Penalty Provisions For Violations Of Subsection (b); Providing For Codification, Repealer, Severability, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470 and the Parking Department at 305.673.7505.*

10:25 a.m.

An Ordinance Amending The Code Of The City Of Miami Beach, Florida By Amending Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial Medium Intensity District," At Section 142-305, "Prohibited Uses," By Adding Bars, Dance Halls, And Entertainment Establishments As Prohibited Uses Within The CD-2, Sunset Harbour Neighborhood, Generally Bounded By Purdy Avenue, 20th Street, Allon Road And Dade Boulevard; Providing For Codification; Repealer; Severability; Applicability; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:30 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2 "Administration," Article VII "Standards Of Conduct," Division 5 "Campaign Finance Reform," Encompassing City Code Sections 2-487 "Prohibited Campaign Contributions By Vendors," City Code Section 2-488 "Prohibited Campaign Contributions By Lobbyists On Procurement Issues," City Code Section 2-489 "Prohibited Campaign Contributions By Real Estate Developers," And City Code Section 2-490 "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues," By Providing That Commencing January 1, 2016, Members Of The City Commission Or Candidates For Said Offices Shall Be Prohibited From Either Directly Or Indirectly Soliciting, Accepting Or Depositing Any Campaign Contribution Regarding City Elected Office From A Vendor, Lobbyist Or A Procurement Issue, Real Estate Developer, Or Lobbyist On A Real Estate Development Issue; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:31 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform," By Adding Thereto Section 2-491 Entitled "Prohibited Lobbying By Campaign Consultants," Prohibiting Campaign Consultants And Certain Affiliated Persons Or Entities From Lobbying City Commission For 12 Months Subsequent To Swearing In Or Subject Elected Office(s), Establishing Delinctions, And Limited Exemption; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:35 a.m.

A Resolution Accepting The Recommendation Of The City's Finance And Citywide Projects Committee, And Approving, Upon Second And Final Reading Of This Resolution And Following A Duly Noticed Public Hearing, A Ground Lease Agreement In The Form Attached To This Resolution, Between The City (Owner Or Landlord) And The Sabrina Cohen Foundation (Tenant), In Connection With The Use Of 5,100 Square Feet Of City-Owned Land, Located At Allison Park, Having A Street Address Of 6475 Collins Avenue (Premises), For A Term Of Ninety-Nine (99) Years, With No Renewal Options For The Purpose Of Developing A Wellness Center, And Waiving, By A 5/7th Vote, The Competitive Bidding Requirement In Section 82-39(A) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City, And Further Waiving, By A 5/7th Vote, The Appraisal Requirement In Section 82-39(B) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470; the Parks & Recreation Department at 305.673.7730 and/or the Department of Public Works at 305.673.7080.*

10:40 a.m.

A Resolution Adopting The First Amendment To The Capital Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:45 a.m.

A Resolution Adopting The First Amendment To The General Fund, Enterprise Fund, Internal Service Fund, And Special Revenue Fund Budgets For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:50 a.m.

A Resolution Adopting The Amendment To The City Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

11:00 a.m.

A Resolution Approving, Following A Duly Noticed Public Hearing Pursuant To Sections 170.07 And 170.08, Florida Statutes, The Final Assessment Roll For The Special Assessment District Known As The Sunset Islands 3 & 4 Utility Improvement District, And Confirming Such Assessments As Legal, Valid, And Binding, First Liens Upon The Property Against Which Such Assessments Are Made Until Paid. *Inquiries may be directed to the Capital Improvement Projects Department at 305.673.7071 and the Office of the City Attorney at 305.673.7470.*

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 206.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6. TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND
KIMLEY-HORN AND ASSOCIATES, INC.
FOR
ENVIRONMENTAL ANALYSIS SERVICES PURSUANT TO
RFQ 2015-213-KB PREPARATION OF ENVIRONMENTAL ANALYSIS FOR MIAMI
BEACH TRANSIT PROJECTS INCLUDING THE BEACH CORRIDOR TRANSIT
CONNECTION PROJECT AND RELATED SERVICES**

This Professional Services Agreement ("Agreement") is entered into this _____ day of December, 2015, between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 ("City"), and **Kimley-Horn and Associates, Inc.**, a **North Carolina Corporation**, whose address is **1221 Brickell Avenue, Suite 400, Miami, FL 33131**(Consultant).

**SECTION 1
DEFINITIONS**

Agreement: This Agreement between the City and Consultant, including any exhibits and amendments thereto.

City Manager: The chief administrative officer of the City.

Consultant: For the purposes of this Agreement, Consultant shall be deemed to be an independent contractor, and not an agent or employee of the City.

Services: All services, work and actions by the Consultant performed or undertaken pursuant to the Agreement.

Fee: Not to exceed amount paid to the Consultant pursuant to this Agreement.

Proposal Documents: Proposal Documents shall mean City of Miami Beach **RFQ No. 2015-213-KB** for **Preparation of Environmental Analysis for Miami Beach Transit Projects Including the Beach Corridor Transit Connection Project and Related Services**, together with all amendments thereto, issued by the City in contemplation of this Agreement, **RFQ**, and the Consultant's proposal in response thereto (Proposal), all of which are hereby incorporated and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: this Agreement; the **RFQ**; and the Proposal.

Risk Manager: The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139: telephone number (305) 673-7000, Ext. 6435: and fax number (305) 673-7023.

Consultant Service Order: "Consultant Service Order" shall specifically describe and delineate the particular services which will be required of Consultant for the Project that is the subject of such order.

SECTION 2

SCOPE OF SERVICES (SERVICES)

2.1 In consideration of the Fee to be paid to Consultant by the City, Consultant shall provide the work and services described in Exhibit "A" hereto (the Services).

2.2 Consultant's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in the Consultant Service Order.

2.3 Consultant shall only commence any services, or portions thereof, upon issuance of a Consultant Service Order by the City.

SECTION 3

TERM

The term of this Agreement (Term) shall commence upon execution of this Agreement by all parties hereto, and shall have an initial term of **three (3) years**, with a **two (2), one (1)-year** renewal options, to be exercised at the City Manager's sole option and discretion, by providing Consultant with written notice of same no less than thirty (30) days prior to the expiration of the initial term.

Notwithstanding the Term provided herein, Consultant shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in the Consultant Service Order.

SECTION 4

FEE

4.1 In consideration of the Services to be provided, Consultant shall be compensated **through individual Consultant Service Orders issued for a particular project**, on a "fixed fee" or "not to exceed" basis. Notwithstanding the preceding, the total fee paid to Consultant pursuant to this Agreement shall be subject to funds availability approved through the City's budgeting process.

4.2 The City shall pay the Consultant the "lump sum" amount identified in the approved Consultant Service Order based on the Consultant's hourly rates set forth in Exhibit B, attached hereto. Approved Additional Services shall be compensated in accordance with the hourly rates set forth in Exhibit C. Consultant shall not commence any additional services unless approved, in writing by the City. Any request for payment of additional services shall be included in a Consultant payment request.

4.3 INVOICING

Upon receipt of an acceptable and approved invoice, payment(s) shall be made within thirty (30) days for that portion (or those portions) of the Services satisfactorily rendered (and referenced in the particular invoice).

Invoices shall include a detailed description of the Services (or portions thereof) provided, and shall be submitted to the City at the following address:

Josiel Ferrer-Diaz, El, Transportation Manager
City of Miami Beach
1700 Convention Center Drive
Transportation Department
4th Floor
Miami Beach, Florida 33139

SECTION 5 **TERMINATION**

5.1 TERMINATION FOR CAUSE

If the Consultant shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Consultant of its violation of the particular term(s) of this Agreement, and shall grant Consultant ten (10) days to cure such default. If such default remains uncured after ten (10) days, the City may terminate this Agreement without further notice to Consultant. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Consultant. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against Consultant. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5.2 TERMINATION FOR CONVENIENCE OF THE CITY

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO CONSULTANT OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT BY THE CONSULTANT OF SUCH NOTICE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY THE CITY, CONSULTANT SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED UP TO THE DATE OF TERMINATION; FOLLOWING WHICH THE CITY SHALL BE DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.

5.3 TERMINATION FOR INSOLVENCY

The City also reserves the right to terminate the Agreement in the event the Consultant is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

SECTION 6 **INDEMNIFICATION AND INSURANCE REQUIREMENTS**

6.1 INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City of Miami Beach and its officers and employees, from and against any and all actions (whether at law or in equity), liabilities, losses, and expenses, including, but not limited to, reasonable attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise from the negligent acts, errors, omissions or other wrongful conduct of the Consultant, its officers, employees, agents, contractors, or any other person or entity acting under Consultant's control or supervision, as a result of the Consultant's performance of the Services pursuant to this Agreement.

The parties agree that one percent (1%) of the total compensation to Consultant for performance of the Services under this Agreement is the specific consideration from the City to the Consultant for the Consultant's indemnity agreement. The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

6.2 INSURANCE REQUIREMENTS

The Consultant shall maintain and carry in full force during the Term, the following insurance:

1. Consultant General Liability, in the amount of \$1,000,000;
2. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence, for bodily injury and property damage;
2. Consultant Professional Liability, in the amount of \$200,000; and
3. Workers Compensation & Employers Liability, as required pursuant to Florida Statutes.

The insurance must be furnished by insurance companies authorized to do business in the State of Florida. All insurance policies must be issued by companies rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

All of Consultant's certificates shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy. The insurance certificate for General Liability shall include the City as an additional insured and shall contain a waiver of subrogation endorsement.

Original certificates of insurance must be submitted to the City's Risk Manager for approval (prior to any work and/or services commencing) and will be kept on file in the Office of the Risk Manager. The City shall have the right to obtain from the Consultant specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

The Consultant is also solely responsible for obtaining and submitting all insurance certificates for any sub-consultants.

Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement.

The Consultant shall not commence any work and or services pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager.

SECTION 7

LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Consultant and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

SECTION 8

LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$100,000, less any fee actually paid to Consultant under this agreement. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$100,000, less any fee actually paid to Consultant under this agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$100,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement, less any fee actually paid to Consultant under this agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

SECTION 9

[INTENTIONALLY DELETED]

SECTION 10 **GENERAL PROVISIONS**

10.1 AUDIT AND INSPECTIONS

Upon reasonable verbal or written notice to Consultant, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Consultant shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

10.2 [INTENTIONALLY DELETED]

10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING

Consultant shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this Section, and any attempt to make such assignment (unless approved) shall be void.

10.4 PUBLIC ENTITY CRIMES

Prior to commencement of the Services, the Consultant shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

10.5 EQUAL EMPLOYMENT OPPORTUNITY

In connection with the performance of the Services, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, or age.

10.6 CONFLICT OF INTEREST

The Consultant herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, and as may be amended from time to time; and by the City of Miami Beach Charter and Code (as some may be amended from time to time); both of which are incorporated by reference herein as if fully set forth herein.

The Consultant covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the

performance of the Services. The Consultant further covenants that in the performance of this Agreement, Consultant shall not knowingly employ any person having such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising there from.

SECTION 11

NOTICES

All notices and communications in writing required or permitted hereunder, shall be delivered personally to the representatives of the Consultant and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice in writing, all such notices and communications shall be addressed as follows:

TO CONSULTANT: **Kimley-Horn and Associate, Inc.**
 1221 Brickell Avenue, Suite 400
 Miami, Florida 33131
 Attn: Robert Lapore, P.E., Project Manager

TO CITY: **City of Miami Beach**
 1700 Convention Center Drive
 Transportation Department
 4th Floor
 Miami Beach, Florida 33139
 Attn: Josiel Ferrer-Diaz, El, Transportation Manager

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

Notice shall be deemed given on the day on which personally served, or the day of receipt by either U.S. certified mail or overnight delivery.

SECTION 12

MISCELLANEOUS PROVISIONS

12.1 CHANGES AND ADDITIONS

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.2 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.3 ENTIRETY OF AGREEMENT

The City and Consultant agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

12.4 CONSULTANT'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, if the Consultant meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Consultant shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Consultant upon termination of this Agreement. Upon termination of this Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

Consultant's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event the Consultant does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

Mayor

Date: _____

Date: _____

FOR CONSULTANT:

Kimley-Horn and Associates, Inc.

ATTEST:

By: _____
Secretary

Project Manager

R. Russell Barnes, III, PE

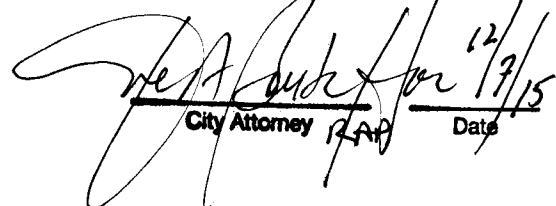
Print Name

Print Name / Title

Date: _____

Date: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney RAB Date 12/7/15

EXHIBIT A – SCOPE OF SERVICES

Preparation of Environmental Analysis for Miami Beach Transit Projects, including the Beach Corridor Transit Connection Project and Related Services

Project Understanding

The City of Miami Beach and the Consultant (aka the Kimley-Horn Team) desire to set forth the general terms and conditions whereby the Kimley-Horn Team will be engaged to provide professional consulting services on one or more Projects (with respect to each engagement the “Project”), with the specifics to each engagement to be set forth in an executed Consultant Service Order (CSO). The Kimley-Horn Team will provide the services set forth below through separately negotiated and executed CSOs with compensation budgeted in the CSOs.

The services to be provided shall support the City of Miami Beach staff in all aspects of advancing and implementing the “Preparation of Environmental Analysis for Miami Beach Transit Projects, including the Beach Corridor Transit Connection Project and Related Services.” The specifics of the work items associated with these services have not been finalized at this time. Some of the services associated with this program could include, but are not limited to planning; visioning; data collection and analyses; environmental analyses and permitting; stakeholder coordination and public engagement; reporting to the City, State, and Federal agencies as required; design and engineering; procurement support and other activities as necessary.

The general services to be rendered by the KHA Team will fall under the two main headings as outlined by the City of Miami Beach:

1. Developing the scope and deliverables of the desired environmental analyses and documents in order to expedite the implementation of the City of Miami Beach transit projects, including the Miami Beach Component of the Beach Corridor Transit Connection Project; and
2. Reviewing and evaluating proposals, and developing agreements and supporting documentation resulting from proposals, both from a technical and financial perspective, including Public-Private Partnership (P3) proposals.

The following general scope items provide a description of the types and range of services that could be authorized by the City of Miami Beach on an individual CSO basis. These tasks are not intended to be an all-inclusive listing of tasks but a general description of the types of services that may be needed by the City of Miami Beach under each of these two categories:

Developing the scope and deliverables of the desired environmental analyses and documents in order to expedite the implementation of City of Miami Beach transit projects

Project Development and Engineering

Project Development and Engineering includes all services which facilitate the planning, designing, and engineering of new transit systems and horizontal or vertical transit facilities, as necessary to define the projects to a level necessary for environmental analyses and documentation and to advance projects toward implementation through the appropriately determined project delivery method. Technical and consulting services under this task may include but not be limited to:

- Aerial photography
- Geotechnical surveys
- Topographic surveys
- Subsurface utility exploration
- Utility assessment, conflict identification, coordination, and mitigation
- Origin and destination studies and market surveys
- Ridership estimation - regional travel demand modeling and corridor/mode specific applications
- Operations planning, route analysis, and performance assessment
- Fare collection
- Traffic engineering and corridor simulation
- Evaluation of dedicated transit lanes
- Bus rapid transit (BRT), Enhanced Bus Service (EBS), light-rail transit (LRT)/streetcar right-of-way and guideway/track design
- Station/stop area design and streetscape planning
- Multimodal streetscape design
- Intelligent transportation systems, traffic signal operations, traffic management, signal prioritization
- Civil and structural engineering and design
- Systems engineering, communications, train control
- Power supply, traction power, substations
- Off-wire technologies and alternative propulsion
- Vehicle specifications and procurement
- Capital costs (opinion of probable costs) estimates
- Operating and maintenance costs estimates
- Maintenance and storage programming, location selection and site design
- Transit oriented design and development
- State-of-good repair assessment
- Right-of-way, real estate management
- Assessment of project finance and delivery methods
- Other services as deemed necessary to advance projects
- Miscellaneous tasks and services

Environmental Analyses, Documentation, Compliance Assessment and Permitting

Environmental analyses, compliance assessment, and permitting includes the services necessary to achieve environmental compliance, approvals and necessary permits (when applicable) for project design, engineering, construction and implementation.

Depending on the potential of impact for transit projects affecting areas outside of the existing transportation rights-of-way, the appropriate class of action could range from categorical exclusion (CE) to a significantly more Environmental Assessment (EA), or Environmental Impact Statement (EIS). Engaging Federal involvement and funding in addition has further implications on the requirements for environmental analyses and documentation. The Team will provide support in making an early determination of the appropriate environmental class of action necessary. Technical and consulting services under this task may include but not be limited to:

- Consult with the appropriate City, State and Federal agencies and stakeholders regarding appropriate environmental class of action (Documented Cat Ex/EA/SEIR/EIS)
- Prepare project descriptions and define project purpose and need
- Environmental data collection, analysis and documentation including but not limited to:
 - Social Resources and Effects Evaluation
 - Environmental Justice (EJ)
 - Land Use
 - Relocation Potential
 - Visual and Aesthetics
 - Cultural Resources
 - Recreational, Section 4(f) Resources
 - Natural Resources
 - Wetlands and Essential Fish Habitat
 - Floodplains
 - Water Quality
 - Special Designations
 - Wildlife and Habitat
 - Permit Conditions
 - Noise and Vibration
 - Air Quality
 - Construction Impact Analysis
 - Contamination
 - Utilities
- Prepare environmental documents (Documented Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, Environmental Impact Statement/Record of Decision, State Environmental Impact Report)
- Permitting
- Other services as deemed necessary to advance projects

Stakeholder Consensus and Documentation

Key stakeholders will be identified with the City of Miami Beach to provide an approach that considers all project opinions. Technical and consulting services under this task may include but not be limited to:

- Agency Stakeholder Coordination
 - Technical advisory committee (TAC) for technical advice
 - One-on-one meetings with agencies and key stakeholders
 - One-on-one meetings with elected officials

Public Coordination, Consensus and Documentation

An approach to public involvement will be developed with the City of Miami Beach that is inclusive and considers all project opinions. Technical and consulting services under this task may include but not be limited to:

- Public Engagement Plan
 - Define Engagement Techniques
 - Identify Key Messages
 - Link Engagement Activities to Project Schedule
- Engagement Techniques
 - Web Site
 - Social Media
 - Public Meetings
 - Business Outreach
 - Technical Advisory Committee
 - Review Agency Coordination
- Public workshops, meetings and information sessions
- Prepare presentations, display, 3D models, videos, and animations
- Conduct public hearing(s)

Project Finance and Grant Development

The Kimley-Horn Team will support the City of Miami Beach in identifying funding strategies for projects, and particularly identifying non-traditional sources of funding that support, leverage and even eliminate the need for traditional federal funding programs. The Kimley-Horn Team's specific duties and engagement will be better delineated with the application of each project. Technical and consulting services under this task may include but not be limited to:

- Initial screen of local, state, and federal funding options (capital and operating)
 - High level screen of available funding options – table of funding options

- In partnership with the City of Miami Beach, develop guidelines for possible funding sources
- Workshop with City of Miami Beach staff and the City's Financial Advisors and partners (as defined by the City of Miami Beach) to discuss funding options and to narrow the list of feasible funding options based on the guidelines and provide any support needed in order for the City's Financial Advisors to develop forecasts of prioritized funding sources and order of magnitude estimates for each funding option and to advance funding options that appear viable into funding commitments necessary to move the project forward.
- Partner with the City of Miami Beach on the best strategies to move funding options forward
 - Identify preliminary steps to move the narrowed list of funding options forward and the anticipated timing to do so
 - Workshop with the City of Miami Beach and partners to finalize steps to move the finalized funding options forward
- Assist the City of Miami Beach with Grant applications for state or federal (TIGER) discretionary grants (as needed)

Reviewing and evaluating proposals, both from a technical and financial perspective, including reviewing Public-Private Partnership (P3) proposals

The Kimley-Horn Team may be requested to participate in the development of requests for proposals and/or the evaluation of proposals received, including unsolicited proposals. Technical and consulting services under this task may include but not be limited to:

- Development of proposal specifications for procurement solicitations
- Development of evaluation criteria for procurement solicitations
- Working with the City of Miami Beach in conducting Industry Forum(s) to solicit market interest at the City of Miami Beach's discretion
- Evaluating proposals received
 - Money value (cost effectiveness)
 - Qualifications
 - Performance specifications
- Assist in development of agreements resulting from proposals